

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**REPLY COMMENTS OF
OARnet/OSC at The Ohio State University**

Introduction and Summary

OARnet/OSC at The Ohio State University (“OARnet or OARnet/OSC”) respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ OARnet/OSC at The Ohio State University supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

OARnet/OSC requests that this Commission clearly rule that private networks, such as those operated by colleges and universities, are exempt from CALEA; and further OARnet/OSC submits that, as explained below, existing procedures are adequate for law enforcement purposes and OARnet/OSC has fully cooperated with law enforcement surveillance requests.

Finally, OSC asserts that applying CALEA to private networks such will impose extraordinary costs on the education community. Such costs, should they be unfunded as currently proposed, will significantly adversely impact the core mission of OARnet/OSC, TFN and the educational community.

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

Background

The Third Frontier Network ("TFN") is a dedicated high-speed fiber-optic network linking Ohio colleges and universities with research facilities to promote research and economic development. Over 1,600 miles of fiber have been purchased to create the network backbone. In addition TFN purchases various types of point to point connectivity from phone companies and cable companies. TFN is a technology initiative of the Ohio Board of Regents, and is operated by OARnet, the networking division of the Ohio Super Computer ("OSC"). The eTech Ohio Commission and Ohio Department of Education are also TFN founding members. TFN backbone infrastructure and equipment were purchased with state and federal funds. OARnet purchased unused, or "dark fiber" from several telecommunications companies and service providers to build TFN.

Third Frontier Network (TFN) is the most advanced statewide research network in the nation. After nearly two years of development, nearly 100 institutions of higher education throughout the state have access to the nation's most advanced statewide education and research network. Additionally, thousands of Ohio's primary and secondary schools will ultimately connect to the network. TFN is not directly connected to the public switched network and TFN does not provide phone service.

OARnet/OSC is focused primarily on providing high quality computing and networking services to its users. In the last few years, OSC has expanded its role to provide services to national high performance computing and networking groups in the areas of training, scientific computing, and network research.

Discussion

1. **The FCC Should Clearly Rule That Higher Education Networks Such as TFN Are Exempt from CALEA.**

47 U.S.C. §100 2(b)(2)(B) states in pertinent part that “...equipment, facilities, or services that support the transport or switching of communications for private networks....” are not subject to CALEA. Unfortunately the Commission appeared to create ambiguity when it stated : “To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA” *Order* at ¶ 36, n.100.

With the advent of Voice Over Internet Protocol (VOIP) technology it is difficult, if not impossible, to make a clear determination whether a private network is “interconnected with the public network.” TFN is not connected to the public switched network pursuant to any formal agreement but by using IP protocol it is possible, and in fact highly likely, that a TFN connection is connected to the public switchboard network via VOIP and therefore the Commission’s ambiguity could ensnare the entirety of TFN. For this reason, the Commission should clearly rule that CALEA only applies to commercial networks.

2. **OARnet has consistently and effectively complied with all law enforcement requests.**

OARnet generally receives 5 to 10 requests from law enforcement agencies per year. The law enforcement agencies are commonly the FBI and County Sheriffs. Upon receiving proper credentials OARnet supplies the requested information, usually within just hours of the request. Commonly OARnet is asked to provide information for location or ownership of specific computer hosts. Occasionally OARnet has been asked to provide email surveillance which OARnet has always provided.

OARnet recognizes its obligation to cooperate with law enforcement and has always provided assistance when asked. OARnet will assist law enforcement whenever needed, but is only asking that any request be reasonable and well defined.

3. A Broad Application of CALEA Would Impose Significant Burdens on OARnet and Divert Funds from Its Critical Educational Mission.

As already described, OARnet believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as OARnet's must comply with some or all assistance capability requirements, such a reading could impose significant fiscal hardship on OARnet. OARnet just rebuilt its entire network a cost of 20 million dollars. It is only one year old. The potential cost to replace the effected parts in compliance with CALEA would be approximately 5.5 million dollars.

OARnet may have to replace network performance monitoring equipment with devices required to capture large data sets. So in addition to potentially replacing routing and switching equipment there could be significant rack and power requirements that at best would cost real operating dollars and at worst would cause OARnet to terminate certain network performance monitoring.

There also is the issue of hiring trained staff to support requests if special equipment is mandated. The additional staffing costs imposed upon OARnet are unknown but potentially expensive.

In short, if the FCC were to apply CALEA broadly to higher education networks contrary to the text of the statute, such a ruling would impose significant burdens that far outweigh its putative benefits. Unless and until these significant financial burdens are matched by additional funding, the Commission should exempt higher education institutions and research networks


from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

Moreover, if the FCC applies CALEA to private educational networks at all, it should construe the *Order* as applying *at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition. In addition, as proposed by the Coalition, any such requirement should be phased in over a five-year period as existing equipment is replaced in the normal equipment replacement cycle.

Conclusion

OARnet respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stan Ahalt", followed by a horizontal line.

Stan Ahalt
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